

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**STUART BITTERMAN, M.D.,**

**Plaintiff,**

**vs.**

**BERKSHIRE LIFE INSURANCE COMPANY  
OF AMERICA**

**Defendant.**

**SCHEDULING ORDER**

**Civil Action No.: 07-cv-11061 (SAS)**

**Conference Date: April 7, 2008**

**at 3:00 p.m.**

WHEREAS, the Court issued an Order for a Conference in accordance with Fed. R. Civ. P. 16(b) on January 25, 2008 (the "Order");

WHEREAS, the Order requires that the parties jointly prepare and sign a proposed scheduling order containing certain information;

NOW, THEREFORE, the parties hereby submit the following information as required by the Order:

(1) the date of the conference and the appearances for the parties; **April 7, 2008 at 3:00 p.m. Ira Lipsius, Esq., attorney for plaintiff, Stuart Bitterman, M.D., Steven P. Del Mauro, Esq., attorneys for defendant, Berkshire Life Insurance Company of America**

(2) a concise statement of the issues as they then appear; **Dr. Bitterman filed a claim seeking total disability benefits under a policy of individual disability income insurance issued by Berkshire Life. Dr. Bitterman alleges he is unable to perform the material and substantial duties of his occupation as a dermatologist due to medical conditions. Berkshire Life asserts that it closed Dr. Bitterman's disability claim on the**

basis of, inter alia, his refusal to provide financial and practice records, including revocation of authorization, thereby preventing Berkshire Life from completing its examination of the disability claim.

(3) a schedule including:

(a) the names of persons to be deposed and a schedule of planned depositions;

**Plaintiff's depositions: Corporate designees of Defendant.**

**Defendant depositions : Key attending and treating physicians (5), Dr. Bitterman, Louise Bitterman, Jeffrey N. Allen, CPA, physician assistants (2) and such other persons whose deposition testimony is deemed necessary through pretrial discovery.**

(b) a schedule for the production of documents; **The parties shall serve Rule 26 mandatory disclosure statements, with documents identified, on or before April 14, 2008. Initial interrogatories and initial document requests shall be served on or before April 30, 2008, and shall be responded to within 30 days. Requests to admit and third-party subpoenas may be served throughout pretrial discovery. Medical, IRS, social security, insurance and employment authorizations shall be executed and returned on or before April 30, 2008.**

(c) dates by which (i) each expert's report will be supplied to the adverse side and (ii) each expert's deposition will be completed; **Plaintiff's expert reports shall be served on or before October 30, with depositions concluded on or before November 20, 2008. Defendant's expert reports shall be served no or before November 30, with depositions completed December 20, 2008.**

(d) time when <sup>fact</sup> discovery is to be completed; **October 15, 2008**

(e) the date by which plaintiff will supply its pre-trial order matters to defendant; **December 30, 2008.**

(f) the date by which the parties will submit a pre-trial order in a form conforming with the Court's instructions together with trial briefs and either (1) proposed findings of fact and conclusions of law for non-jury trial, or (2) proposed voir dire questions and proposed jury instructions, for a jury trial; **January 30, 2009** and

(g) a space for the date for a final pre-trial conference pursuant to Fed. R. Civ. P. 16(d), to be filled in by the Court at the conference. Oct 22 at 4:30

(4) a statement of any limitations to be placed on discovery, including any protective or confidentiality order; **None.**

(5) a statement of those discovery issues, if any, on which counsel, after a good faith effort, were unable to reach an agreement; **None.**

(6) anticipated fields of expert testimony, if any; **Medical, financial and vocational expert witnesses.**

(7) anticipated length of trial and whether to court or jury; **Seven days** ?

(8) a statement that the Scheduling Order may be altered or amended only on a showing of good cause not foreseeable at the time of the conference or when justice so requires;

(9) names, addresses, phone numbers and signatures of counsel;


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Insurance Company of America

By: \_\_\_\_\_  
Ira S. Lipsius

By: \_\_\_\_\_  
Steven P. Del Mauro

SO ORDERED:

  
\_\_\_\_\_  
SHIRA A. SCHEINDLIN  
U.S.D.J.

4/7/08